

**PUBLIC DEFENDER COMMISSION MINUTES
JANUARY 23, 2006
CASTLES ROOM
UNIVERSITY OF MONTANA LAW SCHOOL
MISSOULA, MT**

Call to Order:

The Public Defender Commission meeting was called to order at 8:35 a.m. by Chairman Jim Taylor.

Members Present:

Betty Bischel, Edgar; Mike Sherwood, Missoula; Stephen Nardi, Kalispell; James Park Taylor, Pablo; Wendy Holton, Helena; Doug Kaercher, Havre; Caroline Fleming, Miles City; and Jennifer Hensley, Butte; Tara Veazey, Helena and Theda New Breast, Babb.

Members Absent:

Daniel Donovan, Great Falls.

Other Interested Parties:

Beth Brenneman, representing the Montana Advocacy Program; Don Judge, representing Teamsters Local 190; Judge Jim Haynes, Ravalli County District Court Judge; Judge Jeffrey Langton, Missoula County District Court Judge; George Corn, Ravalli County Attorney; Judge John Larson, Missoula District Court Judge; Wilbur Fish, Browning, Montana; Steve Eschenbacher, Attorney in Hamilton, Montana; Dave Stenerson, Attorney in Hamilton, Montana; Carol Johns, Attorney in Wolf Point, Montana; Sheri Heffelfinger, Legislative Services Division; Penelope Strong, Yellowstone Public Defender's Office; Kris Copenhaver-Landon, Attorney in Billings, Montana; William Boggs, Attorney in Missoula, Montana; Jeff Renz, University of Montana Law Professor; Scott Crichton, ACLU; John Rhodes, Assistant Federal Defender; and David Avery, Federal Defender's Office.

Correction of Minutes:

Corrections of the minutes of the December 9, 2005 meeting are as follows:

1. On page four, "NCDA" should be "NLADA".
2. On page six, "Bichel" should be "Bischel", "Veazy" should be "Veazey" and "Nardia" should be "Nardi".
3. On page four, Don Judge submitted a letter addressed to Senator Mike Cooney regarding the impact of the Public Defender Act on certain collective bargaining agreements that should be included in the Exhibits.
4. On page five, "Lewiston" should be "Lewistown".

Approval of Minutes:

Jennifer Hensley moved to accept the corrected minutes; Steve Nardi seconded the motion and the motion carried unanimously.

Chief Public Defender's Report:

Chief Randi Hood advised the Commission that all of the equipment in the Butte office is working now. Chief Hood also introduced Teri Heiland as the Information Technology Manager and Eric Olsen as the Training Officer.

Chief Hood informed the Commission that she spent four days in Billings, three days in Missoula, some time in Helena, one day in Great Falls and one day in Anaconda, talking to the staff in those offices. She was impressed with the staff and advised that some of the areas are short of staff.

Chief Hood handed out her travel plans to the Commission (refer to Exhibit 1). She went over her travel plans and said that she plans on visiting Plentywood by VisionNet. Her travel plan will be posted to the State Public Defender's website.

Chief Hood wants to start the personnel transition by the first of April. She also said that she will have staffing proposals and cost estimates for the Regions by March 17th.

Chief Hood said that the contract supervisor position is still open but will be posted next month.

Chief Hood discussed what the transition plans need to deal with for the ongoing cases that are not finished by July 1st.

Chief Hood also talked about putting together Dependent and Neglect Standards that could be provided to all public defenders.

Chief Hood talked about filling Eric Olsen's current position as the Chief Public Defender in Cascade County with an entry level position.

Chief Hood then discussed moving Valley County from Region 10 to Region 6 and moving Garfield County to Region 11. She also talked about leaving Hardin in Region 9 with assurances that they will receive the attention that they deserve, even though the city of Billings will be a large part of that region.

Theda New Breast said that she's concerned with the number of cases in Regions 1, 3, 6 and 11, because of the unemployment and the poverty level. Chief Hood said that the training will address Native American issues.

Chief Hood handed out a map of Region 4 (refer to Exhibit 2) and talked about the positions she wants in the Regional Office in Helena, including a regional deputy public defender, investigator, researcher/brief writer, sex offender evaluator and one administrative support person. In the Public Defender Office in Helena, which consists of District Court, Justice Court, Helena City Court and East Helena City Court, she would continue the current staffing levels of five (5) attorneys, one (1) paralegal and two (2) legal secretaries. In Broadwater County which consists of District Court, Justice Court and Townsend City Court, she wants one (1) contracted attorney. In Jefferson County, which consists of District court, Justice Court, Boulder and Whitehall City Courts, she wants a satellite public defender office in Boulder and one (1) attorney and one (1) legal secretary. Jennifer Hensley asked why the sex offender evaluator would be based in Helena and not in Butte. Chief Hood replied that it was a more central location.

Chief Hood asked the Commission about having the Regional Offices separate from the Public Defender Offices. Doug Kaercher questioned the costs and asked for a cost analysis. Steve Nardi said that he's never seen separate offices. He wants the Regional Office to be the same as the Public Defender Office. Jennifer Hensley asked if the attorneys in the regional offices carried caseloads and Chief Hood said yes.

Chief Hood handed out a map of Region 5 (refer to Exhibit 3) and talked about the positions she wants in the Regional Office in Butte, a regional deputy public defender, one (1) attorney, one (1) investigator and one (1) administrative support person. In the Public Defender Office in Butte, which consists of District court, Justice Court and Butte City Court, she wants three (3) attorneys, one (1) paralegal and one-half time (1/2) legal secretary. In the Public Defender Office in Anaconda which consists of Deer Lodge, Powell, Granite County District Courts and Justice/City Courts, she would continue the current staffing of two (2) attorneys and one (1) paralegal. In Beaverhead County, which consists of District Court, Justice and City Courts, she would like to have one (1) contracted attorney. In Madison County, which consists of District Court, Justice and City Courts, she wants one (1) contracted attorney.

Chief Hood talked about putting the Regional Office in Butte in the same building as the State Central Office in the other side of the building.

Jennifer Hensley made a comment for the record suggesting that positions that are supporting multi offices, i.e., sex offender/psych evaluators be located in Butte.

Tara Veazey would like to see what the poverty level and population is for each region.

Jim Taylor would like to see a full time paralegal position in Butte rather than a half time position.

Jennifer Hensley would like to add a half time legal secretary in Anaconda.

Administrative Director's Report:

Mr. Freebourn discussed the requirement for the Chief and Administrative Director to present a strategic plan to the commission that states how services are provided within each region and the costs associated with the plan. He also discussed that the organization chart shows current and planned positions for the State Public Defender Office. For the next meeting an extensive cost analysis will be prepared for presentation to the commission.

The 2009 biennium budget process began last Thursday when Chief Hood and Mr. Freebourn met with Budget Director David Ewer and his staff from the Governor's budget office. Chief Hood provided this group with an update of the activities of the office. Mr. Ewer provided the group with his thoughts about the 2009 biennium budget process.

Mr. Freebourn spoke about the start up and transition plans that the office is currently developing. The office is forming transition teams to move county employees to state employment, to move accounts payable functions from the Judiciary to the State Public Defender and to open new facilities throughout the state to provide public defender services.

Mr. Freebourn presented an organization chart to the Commission, please refer to Exhibit 5, and discussed each position on the chart.

Mr. Freebourn also presented a Gant Chart to the commission (refer to Exhibit 4). He discussed tasks one through forty-six.

Commissioner Steve Nardi questioned Mr. Freebourn about asset transfers from the counties to the state. Mr. Freebourn responded that we are looking into how transfers will be made.

Public Comment:

Judge George Corn, Ravalli County District Court Judge, handed out the Ravalli County Attorney Statistics for 2004 (refer to Exhibit 6). He told the Commission he thinks that Ravalli County needs an office and discussed the statistics from 2004. He talked about the increase of felony cases filed in Ravalli County. Theda New Breast asked if it was due to an increase in the

Meth problem and he said yes but he thinks that in 2005 the felony cases are down a bit.

Judge Jim Haynes, Ravalli County District Court Judge told the Commission that he also thinks Ravalli County needs its own office. He suggested talking to the District Court Judges before breaking up into regions and he talked about using a short form in determining eligibility for a public defender which is now decided by a JP or City Court. He said that in 50% to 75% of appearances a public defender is appointed.

Judge Jeffrey Lankton, Missoula District Court Judge, said that he's an advocate for more quality control and said that it's difficult to have Missoula attorneys working on Hamilton cases because of the driving distance.

Judge John Larson, Missoula District Court Judge, talked about utilizing the Native American Law Center at the University of Montana. Jim Taylor said that he talked to the professors about assisting the Commission.

Wilbur Fish, of Browning, Montana talked to the Commission about racism and discrimination against Montana Native Americans and various injustices in the system. Mr. Fish stated that all he wants is equality and wants the ACLU to look at the injustices of the system.

Steve Eschenbacher of Hamilton, Montana handed out A Proposal for the Administration of the Public Defenders Office of Ravalli County (refer to Exhibit 7). He discussed issues surrounding how to handle conflicts in Ravalli County.

David Stenerson of Hamilton, Montana expressed concern about Chief Hood's comments of making the judges happy.

Don Judge gave the Commission Exhibit 8 which refers to three items: item one discussed the application process and time frame for hiring public defenders. Item two discussed general employee benefit issues and item three discussed letters to current employees and other issues.

Beth Brenneman discussed Region 4 and 5. She doesn't think there is adequate representation in Boulder (Region 4) because of recommitment

cases from the Montana Developmental Center and proposed adding one more attorney in Boulder and a satellite office. In Region number 5, she doesn't think one attorney can handle the recommitment caseload from Warm Springs.

Colleen Ambrose, Department of Corrections in Helena, said that in Region 5, she wanted to make sure that the contract with Dierdra Caughlan is going to be incorporated into the plan. She thinks that Anaconda needs more than two attorneys.

11:30 a.m. to 12:45 p.m. Committee Meetings

12:40 p.m. Back in Session

Conflicts and Grievances Committee

Chief Hood handed out proposed Representation Standards for Appellate Advocacy (refer Exhibit 9); Representation Standards for Post-Conviction Proceedings (refer to Exhibit 10); and Representation Standards for Sentence Review (refer to Exhibit 11). These items will be discussed further at the March commission meeting.

Rules Committee Report

The Committee informed the Commission that they have someone to write the rules.

Standards Committee Report

Jim Taylor talked about the need for another meeting exclusively for standards. It was decided that the Commission would go to Chico on March 16th to exclusively work on standards.

Budget Committee Report

Commissioner Doug Kaercher provided the Commission with a report from the Budget Committee. He commented that the 2009 biennium budget process is underway. He also commented that we will not know the full

financial impact for FY 2006 and FY 2007 until the strategic plan is complete.

Indigent Committee Report

Bonnie Anderson gave indigent questionnaires to Wendy Holton for the committee's review.

Jim Taylor requested that one of the attorneys on the committee go to an indigence conference in Chicago on March 9th. Mike Sherwood indicated that he might be available.

1:15 p.m. Working Lunch Break

Chief Defender's Address to Law Students

Chief Hood encouraged the law students to consider public defense work.

Utilizing Law Student Interns

Jeff Renz, a University of Montana law professor, talked about his primary role of monitoring interns. He told the Commission that U of M requires a minimum of four credits for clinical training. Professor Renz also handed out Student Practice Rules Requirements (refer to Exhibit 12).

John Rhodes, Assistant Federal Defender, and David Avery, a Research and Writing Attorney, of the Federal Defender's Office, who do in-house clinical, talked about the advantages and disadvantages of intern positions.

Public Comment

Penny Strong, Public Defender for Yellowstone County, questioned the regional office being in a separate office from the public defender office and what type of caseload the Regional Deputy Public Defender should

carry. She questioned what will happen with the current county employees' benefits.

Carol Johns, Attorney from Wolf Point, handed out a chart of Roosevelt County's Case Count (refer to Exhibit 13). She discussed the chart and expressed her concern that \$60 per hour is not enough compensation for contract attorneys. She also talked about having an office in Glendive or Glasgow.

Bill Boggs, a contracted attorney from Missoula, discussed the following:

- conflict work with contract attorneys
- utilizing talents that exist
- suggestions for the training officer
- public education
- status of current cases of private attorneys on July 1
- Guardian ad litem's in dependent and neglect cases
- Petition for post conviction relief

Kris Copenhaver-Landon, a private attorney from Billings, told the Commission that she has three and a half years experience in the public defenders office in Yellowstone County and one year of experience as a private attorney. She expressed concerned about what will happen in dependent and neglect cases as of July 1st. She recommended a long transition period.

Sheri Heffelfinger, a policy analyst with the Legislative Services Division, said that she appreciates the work everyone is doing and that the Commission has the support of the Interim Law and Justice Committee. She spoke about a joint meeting between the State Public Defender Office and the Interim Law and Justice Committee sometime during June or July. She also said that the Legislative Audit committee hopes to have reports that show audited costs by each county as per Senate Bill 146 by April.

Scott Crichton of the ACLU commended the Commission on their work. He also said that it is important to keep in mind caseloads and make sure that the public defender system is adequately funded.

Lisa Kauffman, an attorney from Missoula, stated that she is amazed at the lack of morale in public defender offices and she hopes that training will include morale.

Steve Nardi spoke with the Commission about the letter sent to the Commission from the District Court Judges in the 11th Judicial District (refer to Exhibit 14). He told the Commission that he assured the Judges that Chief Hood would be speaking to them about the transition.

2:30 p.m. to 2:45 p.m. Break

2:45 p.m. Closed Session regarding personnel issues.

3:20 p.m. Mr. John Peek from New Dawn Technologies, provided a demonstration of JustWare which is a legal case management system (refer to Exhibit 15). An informal discussion took place between Mr. Peek and various members of the staff and commission about the cost and capabilities of this system.

Old Business

Steve Nardi moved to adopt the Regional Map changes, moving Valley County from Region 10 to Region 6 and moving Garfield County to Region 11. Tara Veazey seconded the motion and it was carried.

New Business

Theda New Breast talked about the massacre of the Heavy Runner clan on the Marias River that occurred on this date.

4:45 p.m. Meeting Adjourned.